

**TITLE 10: MANAGED RISK MEDICAL INSURANCE BOARD
NOTICE OF PROPOSED REGULATIONS**

R-2-02

NOTICE IS HEREBY GIVEN that the Managed Risk Medical Insurance Board (MRMIB) proposes to permanently adopt changes to Chapter 5.5 of Title 10 of the California Code of Regulations.

The changes are for the most part focused on the implementation of legislation, AB1401, which established a thirty six month eligibility period in Board's Major Risk Medical Insurance Program (MRMIP) and a Pilot Program of guaranteed issue into the individual insurance market for MRMIP graduates. MRMIB has scheduled a public hearing in Sacramento, California for October 29, 2003 from 1:00 p.m. to 2:00 p.m. at the following address:

1000 G Street, Suite 450
Front Conference Room
Sacramento, CA 95814

It is requested, but not required, that any person wishing to present testimony should register at 1:00 p.m. on October 29, 2003. The hearing will be adjourned immediately following the completion of oral and written testimony presentations. This public hearing is for the purpose of considering regulations. The MRMIB upon its own motion, or at the instance of any interested persons, may adopt the proposals substantially as presented.

The MRMIB may modify the regulations after public hearing and adopt the modified regulations if the regulations as modified are sufficiently related to the text made available to the public, so that the public was adequately placed on notice that the regulations as modified could result from the proposed regulatory action. The text of any regulation as modified will be mailed to all persons who testify or submit written comments at the public hearing; submit written comments during the public comment period; and all persons who request notification, at least 15 days prior to the date on which the MRMIB adopts the regulations. A request for a copy of any regulations as modified should be addressed to Dennis Gilliam at the address below.

Any person interested may present statements or arguments relating to the proposals in writing to:

Managed Risk Medical Insurance Board
Attn: Dennis Gilliam
1000 G Street, Suite 450
Sacramento, CA 95814

Statements or arguments relating to the proposals can also be faxed to Dennis Gilliam at (916) 327-6580 or e-mailed to dgilliam@mrrib.ca.gov.

Such written statements must be received by 5:00 p.m. on October 29, 2003. Written testimony received after October 29, 2003 may not be assured of consideration unless otherwise expressly stated by the hearing officer. It is requested, but not required, that persons making oral presentations at the hearing provide a written statement at the conclusion of their remarks. The above facility is accessible to persons with mobility impairments. If you are in need of a language interpreter, including sign language, at the hearing, or have other special needs, please notify MRMIB at least two weeks prior to the hearing.

An Informative Digest/Policy Statement Overview for the proposed regulation changes, including a Fiscal Impact Statement and other required determinations are included below. These regulations are written in plain English. An Initial Statement of Reasons for the proposed action has been prepared. These, and copies of the proposed regulations, may be requested by telephone, or by writing to the above address. In addition, the Board has available, a rulemaking file, which contains all the information upon which the proposed regulations are based. This file is available for public perusal at the MRMIB office (see address above), during normal office hours, 8:00 am to 5:00 pm, Monday through Friday. The pertinent documents (proposed regulations and Initial Statement of Reasons) pertaining to this rulemaking can be obtained on MRMIB's website at www.mrmib.ca.gov. The final Statement of Reasons can be obtained when available, after the public hearing and final adoption, by contacting Dennis Gilliam at (916) 324-4695 or dgilliam@mrmib.ca.gov.

Please address questions and requests for available information concerning the proposed regulations to Dennis Gilliam at (916) 324-4695 or Donald Minnich at (916) 327-7978 at the address listed above. Either person can answer questions regarding the substance of the proposed regulations or can direct the question to the appropriate person within the Board. Dennis Gilliam is designated as the small business advocate contact person for the Board.

AUTHORITY AND REFERENCE: The law the Board seeks to make specific by this filing is Part 6.5 of Division 2 of the Insurance Code:

Authority: 1373.62, Health and Safety Code; Sections 10127.15, 12711 and 12712, Insurance Code; ASSEM. Bill No. 1401 (stats. 2002, ch. 794, Sec. 21).

Reference: 10127.15, 10900, 12711, 12712, 12712.5, 10127.15, 12705, 12711, 12711.5, 12712, 12713, 12718, 12725, 12726, 12728, 12729, 12730, 12731, 12732, 12733, 12735, 12736, 12737 and 12738, Insurance Code; 1373.62 and 1373.622, Health and Safety Code.

Title 10, Chapter 5.5

Amended: 2698.100, 200, 201, 202, 203, 204, 205, 206, 207, 208, 300, 301, 302, 303, 401, 403, 405, 407, 500, 501, 502, 503, and 504

Adopted: 2698.102, 600, 602 and 604

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing Laws and Regulations

Insurance Code Section 12700, et seq., established the Major Risk Medical Insurance Program (MRMIP) in 1991, under the direction of the Managed Risk Medical Insurance Board (MRMIB).

Title 10, California Code of Regulations, Chapter 5.5, implements the Major Risk Medical Insurance Program.

Policy Statement Overview

Insurance Code Section 12700, et seq., established the Major Risk Medical Insurance Program (MRMIP) in 1991, under the direction of the Managed Risk Medical Insurance Board (MRMIB). The program provides access to health insurance for individuals who are denied coverage, or offered excessive premiums due to pre-existing medical conditions. MRMIP subscribers can select from several health insurers or health maintenance organizations that contract with the Board. Subscribers pay monthly premiums that are currently from 25% to 35.7% more than what a healthy person in a similar plan would pay. The State subsidizes the remainder of the cost for health services with funding from the Proposition 99 Cigarette and Tobacco Products Surtax Fund. This is a capped appropriation, currently \$40,000.000 per fiscal year and the Board limits enrollments in the program through a waiting list in order to stay within the capped appropriation. These initiations have always limited the ability of the program to serve the people in California who are potentially eligible and in need of coverage through MRMIP.

In September 2002 the Legislature passed, and the Governor signed, Chapter 794, Statutes of 2002 (AB 1401), which made a major restructuring of MRMIP through a four year pilot project. Under the pilot project, persons in MRMIP will remain in the Program for only 36 consecutive months. At the end of that period, they will be required to leave MRMIP, to make room for new applicants. In exchange, they will be granted guaranteed access to all health plans and health insurers in the state who offer coverage in the individual insurance market. AB 1401 establishes the standards for the benefit packages that must be offered by qualifying health plans and insurers to these graduates of the MRMIP, and the premium they may be charged is a one hundred and ten percent multiplier of the prices in MRMIP. The Board will continue to subsidize the cost of people who have graduated from MRMIP, from its \$40 million appropriations, but at approximately half the cost of the current subsidy. The remaining subsidy will be borne by the health plans and insurers issuing the Pilot Program products.

For the MRMIP, the Board contracts directly with four health plans in the individual insurance market to provide coverage, and establishes eligibility standards, coverage and benefit levels and MRMIP premium rates and premium collection procedures through a combination of regulations and contracts with the four plans. The authority over the Pilot Program products available to MRMIP graduates lies with the two regulators of health insurance in California, the Department

of Managed Health Care which regulates health care service plans and the Department of Insurance which regulates health insurers. The regulations presented here implement Board responsibilities under AB 1401, and are limited to the processes for disenrolling MRMIP members who have had 36 months of consecutive coverage in MRMIP, establishing MRMIB's part of the process for implementing guaranteed access to plans and insurers in the individual market, and procedures, timelines and formulas for Board payment to health plans and insurers for the continuing subsidy for MRMIP graduates.

AB 1401 also requires conceptual changes to the program eligibility requirements for dependents. Because dependents are eligible for their own 36 consecutive months of enrollment, the concept of tying dependents to subscribers for eligibility purposes had to be modified. Under certain circumstances described in the regulations, dependents become subscribers in their own right. The regulations also make a number of changes to eligibility, application, enrollment and disenrollment and payment procedures necessary to implement the pilot project and assure a full 36 months of coverage in MRMIP. In addition, these regulations update the benefit structure and standards for plans that contract to provide services in MRMIP, because these standards are the basis for what will be offered to program graduates of MRMIP in the individual insurance market.

The specific changes are summarized below:

Article 1. Definitions

Section 2698.100 establishes definitions that are necessary to clarify the meaning of terms used in these regulations. Eleven definitions necessary to implement AB1401 disenrollment are being added to the definitions section and eight existing definitions have been modified to either implement AB1401 or update the regulations to better conform to other insurance law or evolving practices.

Revised Definitions

Section 2698.100(a), "Appellant".

Section 2692.100(b), "Applicant".

Section 2698.100(c), "Authorized Representatives".

Section 2698.100(f) (Formerly 2698.100 (e) "Coverage".

Section 2698.100(i) (Formerly 2698.100 (f), "Dependent".

Section 2698.100(m) (Formerly 2698.100(i)), "Enroll".

Section 2698.100 (cc) Formerly 2698.100 (f), "Resident".

Section 2698.100 (gg) (Formerly 2698.200 (ff)), "Subscriber Contribution".

New Definitions

Section 2698.100 (e), “Certificate of Program Completion”.
Section 2698.100 (g), “Creditable Coverage” replaces the definition “Qualify Prior Coverage” (Section 2698.100 (s)), which is deleted.
Section 2698.100 (h), “Day”.
Section 2698.200 (j), “Dependent Subscriber”.
Section 2698.100 (u), “Pilot Program Health Plan”.
Section 2698.100 (u), “Pilot Program Standard Benefit Plan”.
Section 2698.100 (x), “Pre-existing Condition Exclusion Period”.
Section 2698.100 (gg), “Program Graduate”.
Section 2698.100 (bb), “Program Graduate Dependent”.
Section 2698.100 (cc), “Standard Monthly Administration Fee”.
Section 2698.100 (bb) “Unique Identification Number”

A new Section 2698.102 is added to Article 1, entitled, Terms, which now includes the standard for “Tense and Number” and “Time”.

Article 2, Eligibility, Application and Enrollment.

Article 2 is revised to make a number of changes to the program eligibility, the treatment of dependents, the program application and enrollment processes necessary to make a smooth transition from MRMIP to the Pilot Program. This includes establishing the procedures for MRMIB subscribers to move into the Pilot Program, once they have had 36 months of continuing coverage.

Section 2698.200, Basis for Eligibility, is revised to make certain clarifications, and to establish that persons can remain in the Major Risk Program for a total of 36 consecutive months.

Section 2698.201, Application, is revised to make a number of technical clarifications, to request additional information on an applicant’s eligibility for continuation in service and on termination of prior insurance coverage.

Section 2698.202, Basis for Eligibility, is revised to make certain clarifications, to allow for quicker refunds of the application payment if an applicant will be pended on the program waiting list for more than 60 days, and to remove the one year program in eligibility penalty for persons who do not pay the initial subscriber contribution when going off the waiting list within the 30 days.

Section 2698.203, Enrollment, is revised to make certain clarifications and to eliminate the requirement for an applicant to make first and second choice of health plans, which is no long necessary.

Section 2698.204, Disenrollment, is revised to make certain technical clarifications, to establish that a program subscriber will be disenrolled from the program after 36 consecutive months, and on becoming eligible for the Pilot Program, and to establish a separate 36 month coverage period in the Major Risk Program for dependents who were initially enrolled later than the Program subscriber. The revised regulation also adds death of a subscriber or enrolled dependent as a reason for disenrollment. New subsections are added to clarify that the effective date for disenrollment will be at the end of the month in which the disenrollment occurred, and to establish notification procedures for disenrollment due to the end of the 36 month consecutive coverage in the Major Risk Program. Finally, this section establishes a 12 month wait for reentering the Major Risk Program once eligible for the Pilot Program, if the Program Graduate leaves the Pilot Program voluntarily, or for nonpayment of premiums or fraud.

Section 2698.205, Continuation of Benefits, is reorganizing for greater clarity and to further define a dependent's right to coverage once the Program subscriber has left the Major Risk Program.

Section 2698.206, Change in Coverage, is renamed "Dependent Coverage" and revises and updates the procedures for enrolling and disenrolling dependents.

Section 2698.207, Transfer of Enrollment, is revised to make certain technical changes, and to speed the time for transferring to another health plan after open enrollment from 60 to 30 days.

Section 2698.208, Payment to Insurance Agents and Brokers, is revised to ask for additional information which will improve the agent and broker application assistance payments.

Article 3. Minimum Scope of Benefits

Section 2698.301(c) of the MRMIP regulations require participating health plans to provide a benefit package that is consistent with the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene Act), including its amendments (Health and Safety Code Sections 1367-1374.16) and implementing regulations as adopted by the Department of Managed Health Care (DMHC). These benefits need to be updated to be consistent with the Knox-Keene Act as part of AB 1401 implementation, since the MRMIP benefits are the basis for the Pilot Program standard benefit plan that Pilot Program plans will utilize to serve Program Graduates. This in accordance with Health and Safety Code Section 1373.(c) and Insurance Code Section 10127.15 (c), and will assure that Program Graduates have access to same benefit standards that they had in MRMIP. The following benefits have been updated or further clarified in accordance with the Knox-Keene Act:

Subsection 2698.301(c)(8)(A), the Mental Health benefit is clarified to differentiate between severe mental illness, which covers adults, and severe emotion disturbance of children, the term that covers children. (Health and Safety Code Section 1374.72)

Subsection 2698.301(c)(12) (c), updates the organ transplant benefit. (Health and Safety Code Section 13671(i))

Subsection 2698.302(h)(11), eliminates the exclusion of the hospice benefit. (Health and Safety Code Section 1368.2)

Subsection 2698.302(c)(13), the limited exclusion for chemical dependency, is revised to correct a cross reference.

Subsection 2693.302(c)(14), revises the cosmetic surgery exclusion to eliminate the exclusion of treatment for complications of cosmetic surgery.

Subsection 2698.301(c)(14), eliminates the exclusion for conditions resulting from Acts of War. (Title 10.) California Code of Regulations, Section 1300.67.05)

Subsections 2698.303(a) and (b), on MRMIP's pre-existing condition exclusion and post enrollment waiting period is changed from 90 days to 3 months to assure greater consistency in waiving all or part of these periods for people on the MRMIP waiting list, as set forth in subsection 2698.303I(c).

Subsection 2698.303(c), on waiving all or part of the pre-existing condition exclusion or post-enrollment waiting period, is updated to add new reasons for the waiver established in Insurance Code Section 12726, and makes other clarifications necessary for a more accurate count of this waiver.

Article 4. Risk Categories and Subscriber Contributions

Sections 2698.401, .403 and .405 are amended to make several clarifications on the usage of the terms subscriber and dependents.

Section 2698.403 is amended to clarify procedures for changing subscriber contribution amounts when a subscriber goes into another age group, and to adjust the contribution for a dependent who is becoming a subscriber because the subscriber has been disenrolled.

Article 5. Appeals

Sections 2698.502 and 503 are amended to make several clarifications on the usage of the terms "enrolled dependent", "dependent subscriber", "appellant" and "calendar day".

Article 6. Pilot Program Payments:

Article 6 adds three new sections to establish the payment, reporting, and reconciliation procedures for Pilot Program plans. Regulations are necessary because the Board will not have a direct contractual relationship with these plans

Section 2698.600 further clarifies and establishes the procedures for paying plans on biannual interim basis contained in AB 1401. (Health and Safety Section Code Section 1372.62 (g) (1) and Insurance Code Section 10127.15(g) (1). Subsection (a) establishes the time frames for Pilot Program health plan reporting. Subsection (b) establishes the reporting requirements for payment and subsection (c) further clarifies the payment formula in AB 1401 and the Board's time frame for making interim biannual payments. Subsection (d) establishes the Board's right to audit/or review interim payments and set the time frame for such review.

Section 2698.602 establishes and further clarifies the annual reporting and reconciliation procedures for paying Pilot Program health plans based on actual costs and revenues. It consists of five subsections: subsections (a) and (b) establish the time frames for annual payments. Subsection (c) establishes the reporting requirements and subsection (d) further clarifies the payment formula set forth in AB 1401. (Health and Safety Section Code 1373.62(g) (3) and Insurance Code Section 10127.15(g) (3). Subsection (e) establishes the ability to audit and review annual reports and the time frame for such reviews. A claims reporting format, based on the format used in the Major Risk Medical Insurance Program is incorporated by reference.

Section 2698.604 establishes the Board's process for notifying Pilot Program Health plans that funding is no longer available for making interim or annual payments under the Pilot Program. It establishes the current semiannual determination of program enrollment, at a public meeting of the Board, as the model for this process, and that the Board will notify plans through their regulatory agencies, the Department of Managed Health Care and Department of Insurance, and directly, if known to the Board, after determining the allowable rate increases, using the criteria in AB 1401 (Health and Safety Code Section 13622.(b) and Insurance Code Section 10127.(g) (b))

These regulations were reviewed by the Managed Risk Medical Insurance Board at their December 18, 2002 meeting and approved at their January 22, 2003 meeting. These regulations were approved as emergency regulations by the Office of Administrative Law on August 5, 2003.

DETERMINATIONS

In accordance with Government Code Section 11345.5(a)(13), the Managed Risk Medical Insurance Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be more effective

in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.

The Managed Risk Medical Insurance Board has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division of the Government Code.

Fiscal Impact Estimate

There are no non-discretionary costs or new costs to local agency school districts.

There is no impact on California housing costs.

There is no significant statewide adverse economic impact on California directly effecting business including the ability of California business to compete in other states. There is an adverse economic impact on certain California business, health plans and health insurers in the individual insurance market. AB 1401 now requires these companies to help subsidize MRMIP graduates who select one of these companies. However AB1401 and these regulations provide for a partial State subsidy of this cost. For the first nine months of the Pilot Program, it is estimated that the health insurance industry and the State will each provide \$10,000,000 in subsidy. This is not expected to affect the ability of California business to compete in other states. AB 1401 also creates an economic impact on individuals in the Major Risk Program, who can be charged an additional 10% of the Major Risk premium once they leave MRMIP for guaranteed individual coverage and be charged the full cost of the State subsidy, if the State is unable to meet the State subsidy for pilot program graduates out of its MRMIP allocation. This impact is offset by an increase in the maximum calendar year limit for benefits for the standard benefit plan selected by Program graduates. While in MRMIP, the annual benefit cap remains at \$75,000 per calendar year, whereas Program graduates will be guaranteed \$200,000 in annual coverage. For the first nine months of the Pilot Project, the additional cost to a Program graduate is estimated to be \$50 per month. There is also a positive impact on private individuals who cannot now get health insurance due to preexisting health condition and cannot get into MRMIP because of its waiting list. The establishment of the Pilot Program will allow the Board to offer Major Risk coverage to more persons, and when combined with the Pilot Program, offer greater access in the individual insurance market.

State and Federal Fiscal Impact

The Major Risk Medical Insurance Program is currently budgeted at \$40,000,000 per fiscal year from the Cigarette and Tobacco Products Surtax Revenue. These regulations will not result in any additional State cost because funding remains capped at \$40,000,000 annually and the Board is required to manage the enrollment levels and administrative costs in the Pilot Program and the base Major Risk Program to remain within that cap. In addition, should the Board determine that

funding is insufficient to address liabilities of both the Pilot Program and the base program; these regulations provide procedures for the Board to reduce or terminate the Pilot Program State subsidy.

There is no Federal fiscal impact, since these regulations do not impact any federally funded State agency or programs. There are currently no federal funds in the Major Risk Medical Insurance Program.

Business Impact Statement

The Board has assessed the impact of these regulatory charges on businesses, including small businesses. None of the businesses impacted by these regulations are known to be small businesses. Although AB 1401 requires companies in the individual insurance market to subsidize the Pilot Program, this will neither create nor eliminate jobs within California, and will not create new businesses, nor eliminate existing businesses or affect the expansion of businesses currently doing business within California.